

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In Re: ) Chapter 11  
)  
VENOCO, LLC, ) Case No. 17-10828 (JTD)  
)  
Liquidating Debtor. )  
- - - - -  
EUGENE DAVIS, in his capacity as )  
Liquidating Trustee of the ) Adv. Pro No. 18-50908 (JTD)  
Venoco Liquidating Trust, )  
)  
Appellant, )  
)  
v. )  
)  
STATE OF CALIFORNIA and ) C.A. No. 22-1174-CFC  
CALIFORNIA STATE LANDS )  
COMMISSION, )  
)  
Appellees. )

J. Caleb Boggs Courthouse  
844 North King Street  
Wilmington, Delaware

Wednesday, April 26, 2023  
8:36 a.m.  
Oral Argument

BEFORE: THE HONORABLE COLM CONNOLLY, U.S.D.C.J.

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL LLP  
BY: ANDREW R. REMMING, ESQUIRE  
BY: MATTHEW TALMO, ESQUIRE

-and-

1 APPEARANCES CONTINUED:

2 BRACEWELL LLP  
3 BY: WARREN W. HARRIS, ESQUIRE  
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8 For the Venoco Trust

9  
10 TROUTMAN PEPPER HAMILTON SANDERS LLP  
11 BY: DAVID M. FOURNIER, ESQUIRE

12 -and-

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16 BY: ALICIA CLOUGH, ESQUIRE  
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19 U.S. ATTORNEY'S OFFICE  
20 BY: EDWARD K. BLACK, ESQUIRE

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24 For the State of California

08:15:37

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\*\*\* PROCEEDINGS \*\*\*

08:22:39 20

DEPUTY CLERK: All rise. Now, in the United

08:36:41 21

States District Court for the District of Delaware, the

08:36:45 22

Honorable Colm F. Connolly presiding.

08:36:47 23

THE COURT: All right. Good morning. Please be

08:36:49 24

seated.

08:36:55 25

Who do we have? Oh, good morning.

08:36:59 1 MR. REMMING: Good morning, Your Honor. For the  
08:37:00 2 record, Andrew Remming from Morris Nichols for the Venoco  
08:37:05 3 Trust. I'm joined at counsel's table today by my colleagues  
08:37:07 4 from the Bracewell firm, Warren Harris, Nancy Davis and  
08:37:11 5 Stephani Michel. Mr. Harris will handle the presentation  
08:37:14 6 today for the trust.

08:37:14 7 THE COURT: Okay. Great.

08:37:17 8 MR. REMMING: Thank you.

08:37:18 9 MR. FOURNIER: Good morning, Your Honor. David  
08:37:25 10 Fournier from Troutman Pepper on behalf of California State  
08:37:31 11 Lands Commission. I'm joined here by my colleagues from the  
08:37:33 12 Loeb & Loeb firm, Steven Rosenthal, Alicia Clough and Marc  
08:37:38 13 Cohen. Mr. Rosenthal will handle the presentation for the  
08:37:42 14 Lands Commission.

08:37:43 15 THE COURT: Okay. Great. Thank you.

08:37:45 16 All right.

08:37:47 17 MR. BLACK: Your Honor, Deputy Attorney General  
08:37:54 18 Edward K. Black appearing as local counsel for the State of  
08:37:58 19 California. With me is Deputy Attorney General Mitchell  
08:38:00 20 Rishe from the State of California as lead counsel. We cede  
08:38:03 21 our time for presentation to the State Lands Commission.

08:38:08 22 THE COURT: All right. Thank you very much.  
08:38:12 23 Good morning.

08:38:12 24 MR. HARRIS: May it please the Court, my name is  
08:38:15 25 Warren Harris. I'll present two points today.

08:38:18 1 First, there's no emergency because there was no  
08:38:20 2 imminent threat to the public's health and safety, and any  
08:38:24 3 alleged emergency was foreseeable.

08:38:26 4 And, second, because ExxonMobil is liable for  
08:38:28 5 the cost of plugging and abandoning the wells, there was a  
08:38:31 6 reasonable alternative to Defendant's taking of the EOF.

08:38:34 7 The Bankruptcy Court ignored that an emergency  
08:38:38 8 justifying the police powers exception must be imminent and  
08:38:41 9 unforeseeable. Courts have limited the circumstances  
08:38:44 10 permitting Government to bypass the just compensation  
08:38:47 11 requirement for the takings of private property. These  
08:38:50 12 limitations are limited to circumstances that involve  
08:38:52 13 emergencies in the traditional sense such as natural  
08:38:55 14 disasters, like fires and floods, wars, and political  
08:39:00 15 activity -- or police activity to combat crime.

08:39:03 16 These narrow circumstances involving emergencies  
08:39:05 17 have two things in common. First, they involve imminent  
08:39:09 18 peril; and, second, they involve unforeseeable  
08:39:12 19 circumstances.

08:39:12 20 The Bankruptcy Court held that an emergency  
08:39:15 21 justified a non-compensable taking. First, the Bankruptcy  
08:39:18 22 Court found that an emergency existed when Venoco allegedly  
08:39:22 23 threatened to leave the EOF unmanned.

08:39:25 24 And, second, the Bankruptcy Court found that an  
08:39:28 25 emergency would exist indefinitely until the wells were

08:39:31 1 permanently plugged and abandoned, but the Bankruptcy  
08:39:34 2 Court's holding was erroneous because the alleged emergency  
08:39:36 3 was neither imminent nor unforeseeable.

08:39:39 4 THE COURT: Is it a totally factual  
08:39:41 5 determination or a legal determination that you take issue  
08:39:43 6 with?

08:39:43 7 MR. HARRIS: It's primarily a legal  
08:39:45 8 determination. We've only challenged one finding as being  
08:39:47 9 clearly erroneous. The rest were legal determinations.

08:39:50 10 THE COURT: Okay. And then what is the one fact  
08:39:52 11 that you have said is fact or the one fact finding that in  
08:39:58 12 your mind constitutes a clear error?

08:40:01 13 MR. HARRIS: The Bankruptcy Court's finding that  
08:40:04 14 there was no choice but for the Commission to step in and  
08:40:08 15 take over, and that goes to the alternative holding of the  
08:40:12 16 Bankruptcy Court as well as affects the unforeseeability  
08:40:17 17 element of the Bankruptcy Court.

08:40:18 18 THE COURT: All right. So, just so I'm clear,  
08:40:21 19 it's the holding that -- well, I'd like you to, again, maybe  
08:40:26 20 just restate it or -- just so I know in my mind what is the  
08:40:31 21 factual finding that you say was clearly erroneous. If you  
08:40:36 22 had to write it down and give it to me, you would.

08:40:39 23 MR. HARRIS: That the Commission had no choice  
08:40:41 24 but to step in and take over. And that's on Page 1497.

08:40:46 25 THE COURT: Hold on. Had no choice but to...

08:40:49 1 MR. HARRIS: Step in and take over the plugging  
08:40:52 2 and abandoning --

08:40:53 3 THE COURT: Now, just so we're clear, the  
08:40:55 4 Commission is not stepping in and taking over. They're  
08:40:58 5 getting third parties effectively to do that; right?

08:41:01 6 MR. HARRIS: Correct. Beacon West was the  
08:41:03 7 contractor they hired.

08:41:04 8 THE COURT: Right. Okay. So, they had no  
08:41:06 9 choice but to get a third party --

08:41:09 10 MR. HARRIS: Right.

08:41:09 11 THE COURT: -- to step in.

08:41:11 12 All right. And just, also, can you step back  
08:41:13 13 and help me out? I just kind of want to get a little -- it  
08:41:15 14 may not be relevant, but am I right that -- is it Wracher --  
08:41:20 15 how do you pronounce it -- the person, the COO or the former  
08:41:23 16 COO whose emails go --

08:41:26 17 MR. HARRIS: Yes. I can't remember his name,  
08:41:27 18 but let me -- Wracher.

08:41:32 19 THE COURT: Wracher?

08:41:32 20 MR. HARRIS: Yes.

08:41:33 21 THE COURT: But it's W-R-A-C-H-E-R or something  
08:41:35 22 like that?

08:41:36 23 MR. HARRIS: Yeah.

08:41:36 24 THE COURT: Okay. So, Wracher is the COO of  
08:41:40 25 Venoco; is that right?

08:41:41 1 MR. HARRIS: Yes.

08:41:42 2 THE COURT: Okay. And he's the one whose emails  
08:41:46 3 are relied upon by the State and the Commission to say,  
08:41:51 4 We've got an imminent threat; right?

08:41:53 5 MR. HARRIS: Primarily, yes.

08:41:54 6 THE COURT: He's also, as I understand it, part  
08:41:55 7 of Beacon West.

08:41:57 8 MR. HARRIS: Beacon West --

08:41:58 9 THE COURT: Is that right?

08:41:59 10 MR. HARRIS: I believe that's right. Beacon  
08:42:01 11 West, as I understand, was formed by former Venoco  
08:42:03 12 employees.

08:42:04 13 THE COURT: Including Wracher.

08:42:06 14 MR. HARRIS: I believe that's right.

08:42:17 15 THE COURT: I am not saying I can articulate it,  
08:42:24 16 but there's something about that that strikes me as odd or  
08:42:28 17 worthy of further inquiry. Can you help me maybe explore  
08:42:32 18 that?

08:42:32 19 MR. HARRIS: As I understand, whenever they  
08:42:35 20 needed someone to come in and take over the facility, they  
08:42:38 21 were looking for people that had experience on that  
08:42:42 22 facility. Venoco was no longer able to employ the workers  
08:42:46 23 that were there, and they -- that's why they formed a  
08:42:49 24 separate company called Beacon West. And it was that  
08:42:51 25 company that was hired by the Commission. That's my

08:42:54 1 understanding.

08:42:57 2 THE COURT: Okay. Now, am I oversimplifying  
08:43:05 3 things too much to say, so Wracher is basically saying, Hey,  
08:43:10 4 we're going to shut down come April, what is it, 25th? I  
08:43:14 5 forget what date it was.

08:43:15 6 MR. HARRIS: There are different dates in the  
08:43:16 7 record. One's April 25th, I think, and one is April 30th.

08:43:20 8 THE COURT: And it's like -- so, we're out of  
08:43:22 9 here April 25th.

08:43:24 10 Now, as a practical matter, if Wracher had  
08:43:28 11 walked off the job April 25th, and all of his colleagues,  
08:43:33 12 and left that plant vacant and H<sub>2</sub>S leaked and killed people,  
08:43:41 13 isn't he going to be prosecuted criminally for some kind of  
08:43:46 14 crime?

08:43:46 15 MR. HARRIS: I'm not that familiar with  
08:43:48 16 California law on that, but I would suspect there's a very  
08:43:51 17 good chance that that would happen. It seems to me that  
08:43:53 18 would be a violation of most state laws.

08:43:55 19 THE COURT: All right. Anyway, sorry. I  
08:44:02 20 interrupted your flow. Go ahead.

08:44:04 21 MR. HARRIS: California and federal law require  
08:44:08 22 an emergency to be imminent to trigger the application of  
08:44:12 23 police powers exception, and the case law is very explicit  
08:44:14 24 about this. California law requires an imminent and  
08:44:18 25 substantial threat to public health or safety, and federal



08:44:21 1 law, likewise, requires imminent peril. And to constitute  
08:44:24 2 an imminent peril, a situation must call for immediate  
08:44:28 3 action.

08:44:29 4 There could be no imminent threat to the  
08:44:32 5 public's health or safety once the State's contractor  
08:44:35 6 assumed operations of the EOF in September 2017.

08:44:38 7 THE COURT: Can you read that again?

08:44:40 8 MR. HARRIS: There can be no imminent threat to  
08:44:42 9 the public's health or safety once the State's contractor  
08:44:46 10 assumed operations of the EOF in September 2017.

08:44:50 11 What the Bankruptcy Court found was the  
08:44:52 12 emergency arose when Venoco allegedly threatened, as we  
08:44:55 13 talked about a minute ago, to leave the EOF unmanned. And  
08:44:59 14 that finding was based on an alleged immediate need to keep  
08:45:02 15 the EOF up and running to protect the public from hydrogen  
08:45:06 16 sulfide.

08:45:06 17 But the Commission didn't assert its police  
08:45:08 18 powers then. If that had been a situation where the police  
08:45:11 19 powers were triggered, it would have taken the EOF. What  
08:45:15 20 the Commission did instead was to go find funding, which  
08:45:18 21 shows that the Commission knew that at that time it couldn't  
08:45:21 22 use its police power to take the EOF without compensation.

08:45:26 23 THE COURT: So, let me just step back, though.  
08:45:28 24 So, are you saying that if in April of 2017, the Commission  
08:45:36 25 gets this email hypothetically, right, and it says, We're

08:45:39 1 going -- we, Venoco --

08:45:41 2 MR. HARRIS: Right.

08:45:41 3 THE COURT: -- are leaving unmanned the EOF come  
08:45:44 4 April 25th, are you saying that if the Commission and the  
08:45:48 5 State had not gone and sought funding and, instead, had  
08:45:57 6 brought in its own engineers, some third party, and on  
08:46:03 7 April 25th walked into the plant, took it over, that  
08:46:10 8 actually would have been a lawful taking?

08:46:12 9 Is that what you're saying?

08:46:13 10 MR. HARRIS: What I'm saying is that the  
08:46:16 11 Commission at that time knew that if -- they knew this was  
08:46:19 12 all coming. They knew --

08:46:20 13 THE COURT: Well, they didn't -- let's say -- I  
08:46:22 14 think the email is, you know, probably dated April 17th or  
08:46:25 15 something. That's my recollection.

08:46:26 16 Does anybody know? I'm looking at the  
08:46:30 17 associates or the younger partners.

08:46:30 18 MS. DAVIS: It's dated April 12th.

08:46:31 19 THE COURT: April 12th. Thank you.

08:46:33 20 All right. So, you know, they get this -- the  
08:46:35 21 Commission gets an email April 12th. And if you had an  
08:46:43 22 email April 12th that said, We're leaving unmanned the plant  
08:46:47 23 on April 25th --

08:46:50 24 MR. HARRIS: Mm-hmm.

08:46:51 25 THE COURT: -- would you dispute that that's

08:46:54 1 imminent?

08:46:56 2 MR. HARRIS: I think that would be imminent.

08:46:56 3 THE COURT: Okay. So, let's stop then.

08:46:58 4 So, then we've got an imminent threat on

08:47:02 5 April 12th that the plant is going to go unmanned on

08:47:04 6 April 25th. And you would agree, right, that the unmanned

08:47:07 7 plant is a danger? You have to agree with that; right?

08:47:10 8 MR. HARRIS: Yes, Your Honor.

08:47:11 9 THE COURT: Okay. So, now the State -- and I'm

08:47:13 10 going to put the State and the Commission together. Let's

08:47:15 11 just call it the State.

08:47:17 12 MR. HARRIS: Yes.

08:47:17 13 THE COURT: Okay. They've got 13 days to do

08:47:20 14 something, right. And if they went out and they hired a

08:47:24 15 third party, all right, let's just call it a third party, to

08:47:28 16 come in on April 25th to take over the plant, would that be

08:47:33 17 a lawful taking?

08:47:35 18 MR. HARRIS: If nothing else had prevented -- if

08:47:39 19 nothing else had interceded to take the imminence away. And

08:47:43 20 here, for example, on April 14th, the Commission of Venoco

08:47:47 21 entered into the Reimbursement Agreement. So --

08:47:49 22 THE COURT: I got that.

08:47:49 23 MR. HARRIS: -- there was already an agreement

08:47:51 24 in place.

08:47:52 25 THE COURT: Right. But it's almost like you're

08:47:54 1 punishing the State because they decided to come up with  
08:47:57 2 something of a compromise, if you will. Because it sounds  
08:48:03 3 like what you're saying is, Look, if they wanted to, they  
08:48:07 4 could have gone out between April 12th and April 25th, and  
08:48:13 5 hired a third party and or manned it with some State  
08:48:18 6 employees. Let's just -- maybe we don't have any other  
08:48:20 7 third party. And they could have come in on April 25th and  
08:48:23 8 taken it over, no problem, without compensation.

08:48:25 9 That's what you're saying?

08:48:27 10 MR. HARRIS: No, Your Honor. Remember here that  
08:48:30 11 Venoco never locked -- no one ever locked the State out of  
08:48:35 12 the EOF. The EOF had always been available. It was simply  
08:48:36 13 a matter of whether it was being manned. So, that's really  
08:48:39 14 what the focus is that --

08:48:40 15 THE COURT: Yeah, but, I mean, if you're the  
08:48:42 16 State and the company says, We're out of here April 25th,  
08:48:48 17 we're out, we're done. I mean, at that point, let's say,  
08:48:53 18 and -- doesn't the State -- I mean, it's responsible for  
08:48:57 19 going out and accounting for what would happen if, in fact,  
08:49:01 20 on April 25th there's nobody at that plant.

08:49:03 21 MR. HARRIS: And what the State went to do was  
08:49:05 22 to hire people to come in. And the Reimbursement Agreement  
08:49:08 23 was put in place, which took the urgency off of that.

08:49:11 24 And then by September, they had a contract with  
08:49:14 25 Beacon West. And that was the emergency that was found by

08:49:17 1 the Bankruptcy Court. That was the imminent threat. The  
08:49:20 2 imminence had ceased once they had a contractor in place  
08:49:24 3 that was going to be manning the facility, because it wasn't  
08:49:27 4 dealing with access to the facility --

08:49:29 5 THE COURT: So, is it your position that there  
08:49:31 6 was an imminent threat between April and September?

08:49:34 7 MR. ROSENTHAL: We don't --

08:49:34 8 THE COURT: Because they signed the contract  
08:49:35 9 with Beacon West in September; right?

08:49:37 10 MR. HARRIS: Correct.

08:49:37 11 THE COURT: Okay. So, is it your position that  
08:49:39 12 those four to five months, there was an imminent threat?

08:49:43 13 MR. HARRIS: No, Your Honor. I guess two points  
08:49:45 14 on that.

08:49:46 15 First, the Reimbursement Agreement was signed on  
08:49:49 16 April 14th, so I believe that would be sufficient to stop  
08:49:52 17 the imminent threat.

08:49:53 18 Then, we have the Beacon West agreement, which  
08:49:56 19 was put in place in September. We disagree with the  
08:50:00 20 Bankruptcy Court's finding. We're not challenging that  
08:50:02 21 finding. Even assuming --

08:50:04 22 THE COURT: Wait, wait. Hold on. So, you've  
08:50:06 23 got to be clear on that then.

08:50:07 24 MR. HARRIS: Yes.

08:50:09 25 THE COURT: So, what finding are you -- if

08:50:09 1 you're disagreeing, then you are saying it's erroneous?

08:50:12 2 MR. HARRIS: We have not challenged it as  
08:50:13 3 clearly erroneous.

08:50:15 4 THE COURT: Okay. I see.

08:50:16 5 MR. HARRIS: But even assuming the Bankruptcy  
08:50:17 6 Court is right on there being an imminent threat, it would  
08:50:19 7 have been cut off by the Reimbursement Agreement or at the  
08:50:23 8 very latest, it would have been cut off in September 2017,  
08:50:27 9 whenever Beacon West was hired.

08:50:28 10 So, at that point there is no more imminent  
08:50:30 11 threat. The imminent threat found by the Bankruptcy Court  
08:50:32 12 is we think Venoco may leave the facility unmanned. The  
08:50:36 13 Reimbursement Agreement really took care of that a few days  
08:50:38 14 later.

08:50:39 15 Then in September, the State hires Beacon West.  
08:50:44 16 They have a contract for -- in place. Any threat of the EOF  
08:50:47 17 being unmanned is gone at that point. And so, even assuming  
08:50:51 18 that the Bankruptcy Court was right and there was an  
08:50:54 19 imminent threat, those two factors -- and certainly by  
08:50:57 20 September 17th, when they had their contractor in, there was  
08:51:00 21 no longer an imminent threat, and the emergency ceased to  
08:51:03 22 exist at that point.

08:51:06 23 THE COURT: Okay.

08:51:09 24 MR. HARRIS: And it was only -- it was only  
08:51:11 25 after the parties couldn't reach an agreement regarding

08:51:14 1 payment for the EOF that the Commission, a year later,  
08:51:18 2 declared that it would use its police power and argue that  
08:51:21 3 that was retroactive all the way back to April of 2017.

08:51:25 4 But this was really about a funding issue.  
08:51:27 5 Whenever they went out in April of 2017, it was to get  
08:51:31 6 funding to man the EOF. It wasn't dealing with access to  
08:51:35 7 the facility, because Venoco had never told them they  
08:51:38 8 couldn't have access. Venoco was simply saying, We can't  
08:51:41 9 afford to pay the employees any longer; therefore, we don't  
08:51:47 10 have the ability to man the facility. You need to handle  
08:51:50 11 getting it manned.

08:51:53 12 The Reimbursement Agreement was signed a few  
08:51:54 13 days later. Beacon West was hired in September. At that  
08:51:56 14 point, even if there was an imminent threat, it was gone.  
08:51:59 15 And the emergency exception to the requirement to compensate  
08:52:03 16 for a taking no longer existed, and they could not take the  
08:52:08 17 facility.

08:52:08 18 Turning now to the plugging and abandoning of  
08:52:12 19 the wells. That doesn't have anything to do with the  
08:52:14 20 immediate need of keeping the EOF staffed. The Bankruptcy  
08:52:18 21 Court held that the emergency that would justify the  
08:52:21 22 Commission's use of the EOF without compensation held that  
08:52:25 23 that would continue until the plugging and abandoning  
08:52:28 24 process was completed. But you have other findings of the  
08:52:32 25 Bankruptcy Court that are inconsistent with that.

08:52:33 1 THE COURT: Well, wait. Hold on.

08:52:35 2 So, before you get to what the inconsistent  
08:52:37 3 findings are --

08:52:38 4 MR. HARRIS: Yes.

08:52:38 5 THE COURT: -- what is the finding -- can you  
08:52:40 6 repeat again the finding that you just said is inconsistent  
08:52:42 7 with what you're about to say? What's that finding?

08:52:44 8 MR. HARRIS: "That an emergency would justify  
08:52:47 9 the Commission's use of the EOF without compensation until  
08:52:51 10 the plugging and abandoning process was complete."

08:52:58 11 And that's on Page 1486 of the record.

08:53:03 12 THE COURT: Okay. So, you're now challenging  
08:53:06 13 the finding by the Bankruptcy Court that an emergency would  
08:53:10 14 justify a continued taking until the plugging and  
08:53:15 15 abandonment of the wells was complete; is that right?

08:53:17 16 MR. HARRIS: That finding is irrelevant to the  
08:53:21 17 immediate harm because the immediate harm deals with keeping  
08:53:25 18 the EOF manned. And that has to happen regardless of the  
08:53:29 19 plugging and abandoning. I mean, what the Bankruptcy Court  
08:53:32 20 found was there's an imminent harm that the EOF might not be  
08:53:36 21 manned, and that imminent harm is going to continue until  
08:53:39 22 the plugging and abandoning process is complete.

08:53:41 23 And our argument is that the plugging and  
08:53:44 24 abandoning process didn't have anything to do with the  
08:53:48 25 imminent harm. The Bankruptcy Court found --



08:53:51 1 THE COURT: Well, wait. What you're saying is a  
08:53:53 2 factual matter? Are you saying it's --

08:53:57 3 MR. HARRIS: Yes, I believe that would be as a  
08:54:00 4 factual matter because if you look at the Bankruptcy Court's  
08:54:02 5 finding, the finding was -- the immediate need was to keep  
08:54:05 6 the EOF up and running to protect the public from exposure.

08:54:08 7 THE COURT: Right.

08:54:09 8 MR. HARRIS: And it said plugging and abandoning  
08:54:12 9 is a separate process. It has nothing to do with the  
08:54:14 10 immediate need to keep the EOF up and running to protect  
08:54:17 11 against the hydrogen sulfide.

08:54:19 12 THE COURT: So, can you just help me out,  
08:54:21 13 though? I need to understand better the facts, I think.

08:54:24 14 If the wells are not plugged, okay, is there  
08:54:33 15 production of H<sub>2</sub>S?

08:54:35 16 MR. HARRIS: Yes.

08:54:36 17 THE COURT: Okay. And isn't it true that unless  
08:54:38 18 that H<sub>2</sub>S is --

08:54:44 19 MR. HARRIS: Stopped.

08:54:44 20 THE COURT: Well, I was going to say it's  
08:54:46 21 transformed into some okay chemical, right, then there is an  
08:54:52 22 immediate threat of human sickness; right?

08:54:58 23 MR. HARRIS: There is a threat, but as long as  
08:55:01 24 the EOF is manned and that treatment process --

08:55:03 25 THE COURT: No, as long as it's manned, but I do

08:55:05 1 think that that's why I wanted to question you on this. I  
08:55:08 2 thought it was a given that until the wells are plugged,  
08:55:15 3 there has to be a facility, via the EOF or creation of some  
08:55:19 4 new facility, that mitigates the H<sub>2</sub>S that will continue to  
08:55:24 5 emanate from the wells until they're plugged.

08:55:26 6 Is that not right?

08:55:28 7 MR. HARRIS: That is correct.

08:55:28 8 THE COURT: Okay. So, how could the Bankruptcy  
08:55:32 9 Court be erroneous in finding that until the wells are  
08:55:36 10 plugged, there's an imminent threat of harm?

08:55:42 11 MR. HARRIS: Imminence is a separate question  
08:55:44 12 to -- leave that aside for a minute. But the plugging and  
08:55:46 13 abandoning process doesn't manage the H<sub>2</sub>S. It would stop it  
08:55:51 14 at a point.

08:55:52 15 THE COURT: It would make it unnecessary.

08:55:54 16 MR. HARRIS: It would make it unnecessary  
08:55:55 17 because you no longer need to manage the H<sub>2</sub>S because there  
08:55:58 18 would be no H<sub>2</sub>S.

08:55:59 19 THE COURT: Right. But until the wells are  
08:56:03 20 fully plugged, there is an H<sub>2</sub>S management problem that has  
08:56:05 21 to be addressed. Otherwise, there is a harm.

08:56:07 22 MR. HARRIS: There is a potential harm, yes.

08:56:09 23 THE COURT: Well, potential harm, I mean -- how  
08:56:11 24 do you get the harm versus potential harm? I mean, I  
08:56:14 25 thought you have to address the H<sub>2</sub>S issue, be it plug the

08:56:17 1 well or have some facility, the EOF; isn't that right?

08:56:22 2 MR. HARRIS: That is right.

08:56:23 3 THE COURT: Okay.

08:56:24 4 MR. HARRIS: But the point we're making in the  
08:56:25 5 Bankruptcy Court, and the Bankruptcy Court found this, that  
08:56:27 6 the plugging and abandoning process isn't part of the  
08:56:31 7 treatment for the H<sub>2</sub>S. It simply would stop it. But  
08:56:34 8 that --

08:56:35 9 THE COURT: Okay.

08:56:35 10 MR. HARRIS: -- that would stop where you no  
08:56:37 11 longer have to be there to treat it. But that is different  
08:56:39 12 than whether you have the facility manned, which is what the  
08:56:43 13 real threat was.

08:56:44 14 So, it's really -- the imminent threat that the  
08:56:47 15 Bankruptcy Court found was the potential that the EOF might  
08:56:50 16 be unmanned. And then the secondary part of that was, and  
08:56:55 17 that threat will continue until the plugging and abandoning  
08:57:00 18 process is completed.

08:57:01 19 But the threat was leaving it unmanned, not just  
08:57:04 20 the hydrogen sulfide. That's the point we're trying to  
08:57:07 21 make. And, therefore, the plugging and abandoning really  
08:57:09 22 doesn't have anything to do with the alleged emergency,  
08:57:13 23 other than the stop -- other than the fact that it would  
08:57:15 24 eventually stop. That's how you would stop the hydrogen  
08:57:17 25 sulfide is through the plugging process.

08:57:17 1 THE COURT: Okay.

08:57:31 2 MR. HARRIS: And so, the point we're making is  
08:57:32 3 that the imminent threat was that the EOF might be unmanned.  
08:57:37 4 That was resolved in September 2017 when Beacon West entered  
08:57:43 5 the facility. The State had a contractor in place. There  
08:57:45 6 was no longer a threat because the facility being manned was  
08:57:50 7 dealing with the hydrogen sulfide.

08:57:52 8 And so, the immediacy, which is one of the  
08:57:54 9 requirements of an emergency, the immediacy and the  
08:57:59 10 imminence of the threat ceased to exist. So, therefore, at  
08:58:03 11 that point, there was no longer an emergency.

08:58:05 12 The Bankruptcy Court also ignored that an  
08:58:09 13 emergency justifying the police powers exception has to be  
08:58:12 14 unforeseen, and the California cases involving the police  
08:58:16 15 powers exception involve unforeseen circumstances.  
08:58:20 16 California law explicitly requires this unforeseen situation  
08:58:23 17 to exist before there can be an emergency. The term  
08:58:27 18 "emergency" has long been accepted in California as an  
08:58:30 19 unforeseen situation calling for immediate action. And a  
08:58:34 20 situation is not unforeseen if the Government has prior  
08:58:37 21 knowledge of the alleged emergency. Federal Courts,  
08:58:41 22 likewise, require that unexpected circumstances exist for  
08:58:44 23 there to be an emergency.

08:58:46 24 The Bankruptcy Court first said there's no such  
08:58:49 25 broad rule. There's no requirement that it be unforeseen,

08:58:52 1 but then found that even if it was -- even if there is a  
08:58:56 2 requirement that it be unforeseen, it would be satisfied  
08:58:59 3 here.

08:59:00 4 But contrary to the Bankruptcy Court's narrow  
08:59:03 5 finding on this interpretation, foreseeability, the  
08:59:06 6 Government doesn't have to know the exact moment and  
08:59:09 7 circumstances that a situation will occur to be  
08:59:13 8 unforeseeable. At a minimum, if the Government intends to  
08:59:17 9 handle the emergency in a certain way and does just that,  
08:59:20 10 the situation is foreseeable and can't be an emergency.

08:59:25 11 Now, let's look at what happened here. The  
08:59:26 12 Commission required Venoco to provide security for the  
08:59:30 13 amount that the Defendants believe was necessary to  
08:59:33 14 compensate the Commission for the cost of plugging and  
08:59:36 15 abandoning the wells if Venoco or another lessee quitclaimed  
08:59:41 16 the leases. The Commission knew that the leases permitted  
08:59:46 17 lessees to unilaterally quitclaim their rights.

08:59:49 18 THE COURT: Incidentally on that, is there any  
08:59:53 19 conditions on the quitclaim? In other words, on the right  
08:59:58 20 to quitclaim?

09:00:00 21 MR. HARRIS: Not that I'm aware of, Your Honor.  
09:00:03 22 There may be a requirement that you can no longer pay or not  
09:00:07 23 be able to do it. I'd need to look at the lease itself to  
09:00:10 24 see if there's a condition. I'm not aware of a condition on  
09:00:12 25 the ability to quitclaim. But if you had a commercially

09:00:16 1 producing well, you wouldn't want to give it back to the  
09:00:18 2 State. That would be negating the value of your lease.  
09:00:20 3 It's a situation like here where the --

09:00:23 4 THE COURT: Well, let me give you an example.  
09:00:25 5 So, I've got some well. I'm making money off it. Put aside  
09:00:30 6 the EOF issue. And all of a sudden, I hit something in the  
09:00:35 7 well. I don't know, it's a dangerous chemical. All right.  
09:00:39 8 And all of a sudden, it is coming out of the pipe.

09:00:45 9 Are you saying at that point, the lessee could  
09:00:48 10 just quitclaim it to the State and say, By the way, we're  
09:00:51 11 walking away. It's on you now to take care of this well.

09:00:54 12 MR. HARRIS: I would have to double-check the  
09:00:56 13 lease. I'm not aware of a condition that would prevent  
09:00:58 14 that. I believe that a lessee could quitclaim the well back  
09:01:01 15 to the State under that circumstance.

09:01:02 16 THE COURT: Without plugging the well?

09:01:04 17 MR. HARRIS: Without plugging, but the State  
09:01:07 18 knows that this is a potentiality.

09:01:09 19 THE COURT: Right. So, it gets a bond.

09:01:11 20 MR. HARRIS: It gets a bond. And here it not  
09:01:13 21 only got a bond, it checked the bond periodically. Whenever  
09:01:17 22 Venoco filed for bankruptcy in 2016, it increased the amount  
09:01:20 23 of the bond. It increased the bond up to \$22 million, which  
09:01:23 24 is the amount that the Commission determined was -- should  
09:01:26 25 be sufficient for plugging and abandoning the wells and

09:01:30 1 decommissioning Platform Holly.

09:01:32 2 THE COURT: And on that you say something in  
09:01:33 3 your briefs about -- what I inferred from the brief was that  
09:01:40 4 the State's only spent 25 million, that there's only a \$3  
09:01:45 5 million gap; is that right?

09:01:45 6 MR. HARRIS: That's what I understand. The bond  
09:01:47 7 was 22 million. The entire amount of the bond has been  
09:01:50 8 paid. The State in its brief said that they spent 25  
09:01:53 9 million. So, yes, \$22 million of that was paid out of the  
09:01:56 10 bond. And the bond --

09:01:58 11 THE COURT: So, are you saying the State's been  
09:02:00 12 made whole so far?

09:02:01 13 MR. HARRIS: Twenty-two of the --

09:02:02 14 THE COURT: I mean, except for the 3 million  
09:02:04 15 bucks.

09:02:04 16 MR. HARRIS: Yes, Your Honor, we are. And  
09:02:06 17 whenever they set the bond, they specifically considered the  
09:02:08 18 cost of plugging, abandoning and decommissioning the wells  
09:02:12 19 and Platform Holly. And that's clearly stated in the  
09:02:15 20 record.

09:02:15 21 It's also in the record that they didn't include  
09:02:18 22 costs for the EOF. Now, the State knew to do the  
09:02:25 23 decommissioning, to do the plugging and abandoning, it would  
09:02:27 24 need to use the EOF. It knew it didn't have any ownership  
09:02:31 25 rights in the EOF. It knew it didn't have a lease or other

09:02:33 1 contractual right to use the EOF, but it didn't put it in  
09:02:37 2 the bond. It even -- in the record, Ms. Lucchesi testified,  
09:02:41 3 "In hindsight, we did not negotiate a bond high enough."

09:02:45 4 That's the issue here. The State knew exactly  
09:02:48 5 what was going to happen.

09:02:49 6 THE COURT: So, why don't you pay them the \$3  
09:02:52 7 million, and we'll just settle this case?

09:02:53 8 MR. HARRIS: It's not the \$3 million. It's the  
09:02:56 9 rental value of the EOF that should have been paid. That's  
09:02:59 10 what's in dispute here.

09:03:00 11 THE COURT: All right.

09:03:05 12 MR. HARRIS: And so, that really is the point  
09:03:07 13 that this was foreseeable, the State knew exactly what was  
09:03:10 14 going to happen. It knew it didn't have access to the EOF,  
09:03:13 15 but it didn't put it in the bond. That was simply a  
09:03:15 16 financial issue. And a year later after they'd been paying  
09:03:18 17 for use of the EOF, they decided, We don't want to pay  
09:03:21 18 anymore. We want to use our police power.

09:03:23 19 And that's exactly what happened here. The  
09:03:25 20 police power is not applicable because this was foreseeable,  
09:03:29 21 and there was no longer an emergency.

09:03:31 22 THE COURT: Can I get a little bit more  
09:03:33 23 background in this area? So, as I understand it, there is  
09:03:37 24 another pipeline that leads from the EOF to, I don't know,  
09:03:43 25 commercial establishments. In other words, that but for



09:03:53 1 that pipeline, which is owned by another party, Plains --

09:03:56 2 MR. HARRIS: Yes, the Plains pipelines which  
09:03:58 3 ruptured. Yes, Your Honor.

09:03:59 4 THE COURT: So, the Plains pipeline ruptured.  
09:04:01 5 And then, as a result of that, the folks that are producing  
09:04:06 6 the oil and gas out of the wells are in trouble --

09:04:10 7 MR. HARRIS: Because --

09:04:10 8 THE COURT: -- because they can't commercialize  
09:04:12 9 their product.

09:04:13 10 MR. HARRIS: They cannot get the gas and get to  
09:04:15 11 market. Exactly right.

09:04:16 12 THE COURT: So, now, did Plains try to fix the  
09:04:20 13 pipeline?

09:04:20 14 MR. HARRIS: I'm not sure if they tried to fix  
09:04:24 15 it. It either -- either it was not commercially reasonable  
09:04:28 16 to do so or maybe they couldn't get permits to do it once  
09:04:31 17 this happened, I think it may have been a permitting issue.

09:04:34 18 THE COURT: That's why --

09:04:34 19 MR. HARRIS: Yeah.

09:04:35 20 THE COURT: The reason why I ask is there is  
09:04:38 21 intimation in the briefing that suggests that -- makes at  
09:04:41 22 least a potential argument that the State created this  
09:04:43 23 situation because the State precluded the continued  
09:04:48 24 commercialization of the oil and gas when this rupture  
09:04:53 25 occurred in 2015.

09:04:55 1 Do you want to say anything about that?

09:04:57 2 MR. HARRIS: I would have to double-check what  
09:05:01 3 the cause was. I know there's separate litigation pending  
09:05:04 4 over the Plains pipeline and its use. There's different  
09:05:07 5 litigation there. I think it was -- and I'm not a  
09:05:10 6 hundred-percent certain on the record, but I believe it was  
09:05:12 7 a permitting issue is why they couldn't get the Plains  
09:05:15 8 pipeline back operational.

09:05:18 9 So, yes, from that standpoint, I guess it would  
09:05:21 10 be the State that caused Venoco the problem. That once it  
09:05:25 11 couldn't get its oil and gas to market, then at that point  
09:05:27 12 they had no business ability to continue to pay for the  
09:05:32 13 operations. And it was a matter of going into bankruptcy  
09:05:35 14 was its only recourse.

09:05:36 15 THE COURT: Right. In your reply brief, you  
09:05:40 16 make an argument really at the outset that there's been a  
09:05:49 17 failure by the Bankruptcy Court and by the State to  
09:05:53 18 recognize that there's really two different properties here.  
09:05:57 19 There's the Plant Holly for the -- sorry, the Platform  
09:06:02 20 Holly.

09:06:02 21 MR. HARRIS: Right.

09:06:03 22 THE COURT: And the leased wells, which really  
09:06:07 23 are the State's property leased to Mobil and then ultimately  
09:06:13 24 Venoco, on one hand. And then, on the other hand, there's  
09:06:17 25 the EOF. And that the takings has been of the EOF, not the

09:06:26 1 Plant Holly wells property which you say, in your briefing,  
09:06:32 2 Venoco had a right to quitclaim to the State.

09:06:37 3 Now, was that argument presented to the  
09:06:39 4 Bankruptcy Court?

09:06:39 5 MR. HARRIS: All the underlying facts were  
09:06:43 6 presented in that -- it's undisputed these are two separate  
09:06:47 7 properties. The quitclaim was for the wells and Platform  
09:06:47 8 Holly.

09:06:50 9 Venoco continued to hold title to the EOF. We  
09:06:54 10 argued -- the whole case is about the taking of the EOF, so  
09:06:57 11 that's undisputed. It's undisputed that the hydrogen  
09:07:03 12 sulfide is being produced from the wells, and that only gets  
09:07:06 13 to the EOF because of the pipeline connecting platform.

09:07:10 14 THE COURT: I get that the facts are there. I  
09:07:12 15 get that the facts are there.

09:07:14 16 MR. HARRIS: Yes.

09:07:14 17 THE COURT: It's just what I found at least the  
09:07:16 18 most compelling articulation of the legal arguments that  
09:07:20 19 flow from the facts was in the reply brief. And I'm just  
09:07:27 20 trying to -- I didn't see anything -- I didn't see the  
09:07:29 21 Bankruptcy Court address that argument in its opinion, so  
09:07:34 22 I'm just trying to get a better handle on it.

09:07:37 23 MR. HARRIS: The Bankruptcy Court didn't  
09:07:38 24 expressly address it. I believe it was raised more in the  
09:07:40 25 summary judgment papers at trial. The focus was really on

09:07:42 1 the emergency aspect, but it's always dealing with two  
09:07:46 2 separate properties.

09:07:46 3 Where this really came up and became more  
09:07:50 4 prominent is in the State's brief. They cite all these  
09:07:53 5 nuisance cases. And they say there's no emergency required.

09:07:57 6 You don't have to have an emergency. What you  
09:07:59 7 do for this type of police powers exception is often called  
09:08:02 8 the emergency exception in California.

09:08:03 9 THE COURT: Well, also nuisance, if you take  
09:08:10 10 property to address a nuisance, you have to pay people;  
09:08:14 11 right?

09:08:15 12 MR. HARRIS: If you are taking the property on  
09:08:18 13 which the nuisance exists for the purpose of remedying the  
09:08:22 14 nuisance, that is an exception to the -- to requirement of  
09:08:26 15 just compensation.

09:08:27 16 THE COURT: Okay.

09:08:27 17 MR. HARRIS: But what we're pointing out or we  
09:08:29 18 pointed out in our reply brief is it's always the same  
09:08:32 19 property. Someone creates a nuisance on their property, and  
09:08:35 20 you go onto that property to remedy the nuisance. That's  
09:08:38 21 not what happened here.

09:08:39 22 And if you look at the State's brief, in several  
09:08:41 23 places it talks about the nuisance or -- may not use the  
09:08:45 24 word "nuisance," but it talks about the harm emanating from  
09:08:48 25 the EOF. The harm is coming from the wells in Platform

09:08:52 1 Holly, and the State really melds those together and argues  
09:08:56 2 nuisance cases. The State cites no case in which a party  
09:09:00 3 has been able to come onto one property owner's property to  
09:09:05 4 remedy a nuisance or problem.

09:09:06 5 THE COURT: Right. And that goes back to --  
09:09:08 6 this is the argument I'm talking about in the reply brief.

09:09:11 7 MR. HARRIS: Right.

09:09:11 8 THE COURT: Is it anywhere in the opinion of the  
09:09:12 9 Bankruptcy Court?

09:09:13 10 MR. HARRIS: It's not. The Bankruptcy Court  
09:09:14 11 didn't squarely address this. There are times --

09:09:17 12 THE COURT: Well, did you squarely raise this to  
09:09:20 13 the Bankruptcy Court without an opportunity to address it?

09:09:23 14 MR. HARRIS: All -- Your Honor, all the facts  
09:09:25 15 were presented. It really was argued in terms of there  
09:09:28 16 being an emergency, and the emergency focused on the two  
09:09:30 17 separate properties.

09:09:31 18 THE COURT: I'm just trying to -- I mean, should  
09:09:33 19 I give the Bankruptcy Court an opportunity, in the first  
09:09:35 20 instance, to address that?

09:09:36 21 MR. HARRIS: Well, maybe so, Your Honor, just  
09:09:41 22 like the Bankruptcy Court didn't address the ExxonMobil  
09:09:44 23 issue. That's another issue that we could come to if the  
09:09:47 24 Court would like.

09:09:47 25 THE COURT: Go ahead.

09:09:48 1 MR. HARRIS: But the Bankruptcy Court didn't  
09:09:49 2 squarely tee that up and look at the fact that there were  
09:09:52 3 two properties. Most of the Bankruptcy Court's opinion  
09:09:54 4 deals with the emergency issue.

09:09:56 5 Turning to ExxonMobil and that point, the  
09:10:00 6 Defendants here can order ExxonMobil to plug and abandon the  
09:10:04 7 wells, but the Bankruptcy Court ignored this and ignored  
09:10:07 8 this alternative altogether.

09:10:09 9 ExxonMobil was Venoco's predecessor in interest.  
09:10:12 10 And as such, both contractually and by statute, ExxonMobil  
09:10:17 11 is required to come in and plug, and abandon and  
09:10:20 12 decommission if Venoco is unable to do so.

09:10:23 13 When Venoco filed for bankruptcy, the Defendants  
09:10:26 14 preserved their rights to enforce the lease obligation.

09:10:28 15 THE COURT: And is that disputed?

09:10:32 16 MR. HARRIS: Is what part of that disputed?

09:10:33 17 THE COURT: The fact -- is the fact -- what  
09:10:35 18 you've just alleged, that ExxonMobil was contractually and  
09:10:41 19 statutorily obligated to plug the wells if the State  
09:10:45 20 required it and Venoco was unable --

09:10:45 21 MR. HARRIS: Venoco.

09:10:51 22 THE COURT: Venoco, sorry.

09:10:52 23 MR. HARRIS: It is not disputed. The Bankruptcy  
09:10:54 24 Court deals with that in Footnote 51 of its opinion.

09:10:57 25 THE COURT: All right. Hold on a second.

09:11:03 1 MR. HARRIS: The footnote runs over from  
09:11:06 2 Pages 1463 to 64.

09:11:19 3 THE COURT: Okay. This is citing that CalGEM,  
09:11:26 4 C-A-L-G-E-M Order --

09:11:29 5 Hold on one second. Have you been able to hear  
09:11:34 6 me? Am I too far back?

09:11:37 7 THE REPORTER: I can hear you, Your Honor.

09:11:41 8 MR. HARRIS: But to answer, Your Honor, I  
09:11:42 9 believe it is undisputed --

09:11:43 10 THE COURT: Okay.

09:11:44 11 MR. HARRIS: -- that ExxonMobil has that  
09:11:45 12 liability, both contractually and by statute.

09:11:48 13 THE COURT: All right. Thank you.

09:11:49 14 And anyway, the Court didn't address that.

09:11:53 15 MR. HARRIS: The Court didn't address it.

09:11:55 16 THE COURT: Right. And your point would be,  
09:11:56 17 Hey, the emergency -- if there's an emergency, it's  
09:12:00 18 emanating from the wells --

09:12:01 19 MR. HARRIS: It's emanating --

09:12:02 20 THE COURT: -- right? And there's -- the State  
09:12:05 21 had the power to compel ExxonMobil to address that  
09:12:10 22 emergency?

09:12:10 23 MR. HARRIS: Absolutely. And it should have  
09:12:12 24 been on ExxonMobil, but instead, the State -- in saying  
09:12:15 25 ExxonMobil, You have this obligation in the contract, you

09:12:17 1 have this obligation under statute, you need to plug and  
09:12:20 2 abandon, you need to decommission, which is going to require  
09:12:23 3 use of the EOF, you need to go handle and do that, what the  
09:12:26 4 State did instead was exercise, allegedly, its police power  
09:12:30 5 to come in and to take the EOF without compensation.  
09:12:34 6 Because this alternative was there for the State to use its  
09:12:38 7 police power to instead benefit ExxonMobil, that it's  
09:12:42 8 arbitrary and unreasonable and, therefore, would not be a  
09:12:45 9 valid use of the State's police power.

09:12:47 10 ExxonMobil had this obligation. ExxonMobil  
09:12:50 11 should have done the plugging, and abandoning and  
09:12:52 12 decommissioning at its expense, rather than the State taking  
09:12:57 13 property without compensation.

09:12:58 14 THE COURT: All right. And you're saying that  
09:12:59 15 the Court never addressed that argument below?

09:13:01 16 MR. HARRIS: Correct.

09:13:02 17 THE COURT: Okay. You're saying you did raise  
09:13:03 18 it squarely?

09:13:04 19 MR. HARRIS: Correct, Your Honor.

09:13:05 20 THE COURT: And you're saying that it's  
09:13:07 21 undisputed that Exxon had this obligation?

09:13:10 22 MR. HARRIS: Correct, Your Honor.

09:13:11 23 THE COURT: And you're saying that Exxon's  
09:13:13 24 obligation was a result of CalGEM, which is an Order issued  
09:13:19 25 in May of 2017; is that right, by the State of California's



09:13:24 1 Department of Conservation, Division of Oil, Gas and  
09:13:26 2 Geothermal Resources?

09:13:27 3 MR. HARRIS: I believe that Order was the Order  
09:13:29 4 for them to plug and abandon. The obligation arises out of  
09:13:34 5 the leases.

09:13:35 6 THE COURT: Okay.

09:13:36 7 MR. HARRIS: And it arises out of the statute.  
09:13:38 8 It's 3237(c) -- 3237(c) of the California Public Resources  
09:13:45 9 Code.

09:13:46 10 But under the leases, it says whenever the State  
09:13:51 11 approved the lease assignment from ExxonMobil to Venoco, it  
09:13:56 12 made clear that ExxonMobil continued to have this liability,  
09:13:59 13 that that was expressed in the lease that if for some reason  
09:14:03 14 Venoco was not able to pay for the plugging and abandoning,  
09:14:06 15 then ExxonMobil's liable.

09:14:08 16 So, under both of those authorities, they're  
09:14:10 17 obligated to do it. And the plugging, and abandoning and  
09:14:13 18 decommissioning requires use of the EOF, which Exxon should  
09:14:17 19 be paying for rather than the State using its police power.

09:14:20 20 THE COURT: Now, was there any attempt by the  
09:14:23 21 State to reach out to ExxonMobil?

09:14:25 22 MR. HARRIS: The State in ExxonMobil entered  
09:14:28 23 into what's called a Phase 1 Agreement, which is in the  
09:14:30 24 record. There was a dispute over a couple of the wells. I  
09:14:33 25 think it was three of the 32 wells. ExxonMobil said, Wait a

09:14:36 1 minute. We're not operator of those wells.

09:14:38 2 This Phase 1 Agreement resolved that issue, but  
09:14:42 3 in that Phase 1 Agreement the Commission reserved its rights  
09:14:45 4 against ExxonMobil. So, all those rights were specifically  
09:14:49 5 reserved, so those rights still exist that the Commission  
09:14:54 6 can require ExxonMobil to do the plugging, and abandoning  
09:15:00 7 and decommissioning.

09:15:00 8 THE COURT: At its cost? At Exxon's cost?

09:15:03 9 MR. HARRIS: At Exxon's costs. Yes, Your Honor.

09:15:04 10 THE COURT: All right. Anything else?

09:15:05 11 MR. HARRIS: Unless the Court has any questions,  
09:15:07 12 we request that the Court reverse the Bankruptcy Court's  
09:15:10 13 final judgment and remand to that Court for further  
09:15:13 14 proceedings.

09:15:14 15 THE COURT: So, yeah. Let's just actually  
09:15:16 16 clarify that.

09:15:16 17 So, on relief you're asking for -- your relief  
09:15:19 18 is a remand?

09:15:19 19 MR. HARRIS: A remand for determination of  
09:15:21 20 damages. The police power exception should not be  
09:15:23 21 applicable here, in which case the Defendants are required  
09:15:27 22 to compensate the Trust and Trustee for the taking. And  
09:15:32 23 there needs to be a remand for the determination of what  
09:15:35 24 those damages are.

09:15:35 25 THE COURT: All right. Thank you.

09:15:36 1 MR. HARRIS: Thank you, Your Honor.

09:15:43 2 THE COURT: You're Mr. Rosenthal?

09:15:44 3 MR. ROSENTHAL: I am Mr. Rosenthal. And I've  
09:15:47 4 appeared in front of you before, I believe.

09:15:49 5 THE COURT: Really?

09:15:51 6 MR. ROSENTHAL: In connection with the sovereign  
09:15:53 7 immunity.

09:15:54 8 THE COURT: Oh, of course. Yes.

09:15:55 9 MR. ROSENTHAL: Yes. Yes, indeed.

09:15:56 10 THE COURT: Was Mr. Harris not part of that?

09:15:58 11 MR. ROSENTHAL: What?

09:15:59 12 THE COURT: The sovereign immunity?

09:16:03 13 MR. ROSENTHAL: I don't think so. Maybe.

09:16:03 14 Were you on sovereign immunity? No. No, he  
09:16:08 15 wasn't.

09:16:10 16 THE COURT: Why not?

09:16:12 17 MR. HARRIS: Your Honor, Mark Dendinger from  
09:16:14 18 Bracewell handled the sovereign immunity.

09:16:16 19 THE COURT: Okay. It's the same client?

09:16:17 20 MR. ROSENTHAL: Yeah, yeah.

09:16:17 21 THE COURT: I thought you meant --

09:16:18 22 MR. ROSENTHAL: No, no, no.

09:16:19 23 THE COURT: -- just a different lawyer.

09:16:20 24 MR. ROSENTHAL: It was the same.

09:16:21 25 THE COURT: Got you.

09:16:22 1 MR. ROSENTHAL: It's the same case.

09:16:23 2 THE COURT: Okay. Go ahead.

09:16:24 3 MR. ROSENTHAL: Thank you, Your Honor.

09:16:25 4 Again, I'm appearing for the California State

09:16:29 5 Lands Commission and for the State of California. And

09:16:33 6 I have a presentation, and there's a number of arguments I

09:16:36 7 want to make. But I was the chief trial counsel and,

09:16:40 8 therefore, I'm quite familiar with the facts of this case.

09:16:43 9 And I wanted to correct some factual issues on questions you

09:16:49 10 raised. Let me just deal with three of them, and then I'll

09:16:53 11 get to my presentation.

09:16:54 12 Number one, you asked whether there were

09:16:56 13 conditions on the quitclaim. And you properly analyzed that

09:17:02 14 issue. There's no condition on the quitclaim. But the

09:17:05 15 obligation to plug, and abandon and leave the wells in a

09:17:11 16 final state over -- not overrode that, was an independent

09:17:17 17 obligation imposed both by the lease terms and by statute.

09:17:21 18 THE COURT: Well, if it's independent then

09:17:24 19 how -- that seems to be -- you just said it's not imposed by

09:17:28 20 the lease, it's independent.

09:17:28 21 MR. ROSENTHAL: I'm sorry. The lease -- I

09:17:34 22 misspoke. The lease does contain a provision that the

09:17:40 23 quitclaim of the leasehold has to be consistent with law.

09:17:45 24 THE COURT: Okay.

09:17:46 25 MR. ROSENTHAL: And the law requires that there

09:17:48 1 be a plug and abandonment, and that they be safely done.

09:17:54 2 And, therefore --

09:17:55 3 THE COURT: So, they can't quitclaim the lease  
09:17:57 4 unless it's plugged or it's rendered safe.

09:17:59 5 MR. ROSENTHAL: That is exactly right.

09:18:00 6 THE COURT: Okay.

09:18:01 7 MR. ROSENTHAL: That was an independent  
09:18:02 8 obligation. It's why we could call on the bond, because  
09:18:05 9 they had an independent obligation to comply with the plug  
09:18:09 10 and abandonment. Because they didn't do it, we called on  
09:18:13 11 the bond.

09:18:13 12 THE COURT: Right.

09:18:14 13 MR. ROSENTHAL: Okay.

09:18:15 14 THE COURT: Now, the bond is tied to the wells  
09:18:19 15 and platform; right?

09:18:21 16 MR. ROSENTHAL: That's the second point I was  
09:18:23 17 going to make.

09:18:24 18 The \$22 million was to pay for everything,  
09:18:31 19 which, again, we don't have a final total, but I'll  
09:18:37 20 represent that the number is approaching a hundred million  
09:18:39 21 dollars for the entire cost. Therefore --

09:18:43 22 THE COURT: The entire cost of?

09:18:45 23 MR. ROSENTHAL: Plug and abandonment, and  
09:18:47 24 operation of the EOF. All of the costs incurred by the  
09:18:52 25 State in connection with the Ellwood Field closedown.

09:19:00 1 THE COURT: All right. So, I mean, why isn't  
09:19:03 2 the problem here the State underestimated what it was going  
09:19:06 3 to cost?

09:19:07 4 MR. ROSENTHAL: It was -- it is -- it is the  
09:19:08 5 problem. I mean --

09:19:09 6 THE COURT: Well, then why does that not fall on  
09:19:11 7 the State? That doesn't mean you get to just take  
09:19:13 8 somebody's property. You've got to -- you know, you get a  
09:19:16 9 bigger bond.

09:19:16 10 MR. ROSENTHAL: It is -- the State should have  
09:19:23 11 asked for more, but that did not excuse leaving a piece of  
09:19:29 12 property unsafe.

09:19:35 13 THE COURT: And the piece of property we're  
09:19:36 14 talking about are the wells and the platform?

09:19:40 15 MR. ROSENTHAL: No, that's the point I want to  
09:19:43 16 make. Venoco operated the wells as a continuous body with  
09:19:53 17 the EOF. It was -- they had always operated this as a  
09:19:59 18 continuous body.

09:20:00 19 THE COURT: But they're different and this is --  
09:20:02 20 see this, I think, is your weakest argument. They haven't  
09:20:04 21 really raised it, but let me raise it for you.

09:20:07 22 Let's suppose the EOF was owned by Green Energy  
09:20:11 23 Company, and Venoco separately leases the wells and  
09:20:19 24 Platform Holly. And Green Energy Company says to you in  
09:20:24 25 April of 2017, We're hitting hard times. We're going to

09:20:30 1 have to shut this EOF down. We're going to have to leave it  
09:20:33 2 unmanned. Although, we know of this other company that  
09:20:36 3 consists of our COO and other former employees of us, Green  
09:20:41 4 Energy Company. You can negotiate with them a contract that  
09:20:44 5 they'll continue to man the EOF.

09:20:49 6 Could you take EOF from Green Energy Company  
09:20:52 7 without giving them any compensation whatsoever?

09:20:55 8 MR. ROSENTHAL: The answer is yes.

09:20:58 9 THE COURT: Really?

09:20:59 10 MR. ROSENTHAL: Yeah.

09:21:00 11 THE COURT: That's an extraordinary thing about  
09:21:02 12 litigations of that --

09:21:03 13 MR. ROSENTHAL: But let me explain what has  
09:21:05 14 happened here and why I don't believe it's extraordinary at  
09:21:10 15 all.

09:21:10 16 The fact of the matter is forget about this.  
09:21:13 17 Let's assume that the gas came from the neighboring  
09:21:17 18 property. If you traced all the way down, the gas came, but  
09:21:22 19 it seeped into our property. Obviously --

09:21:25 20 THE COURT: And what's your "property"?

09:21:27 21 MR. ROSENTHAL: I'm sorry?

09:21:28 22 THE COURT: Well, I'm lost. You say it seeps  
09:21:31 23 into our property. What's "our property"?

09:21:33 24 MR. ROSENTHAL: Well, I'm sorry. I should have  
09:21:34 25 been more articulate.

09:21:37 1 If you have a piece of property from which  
09:21:45 2 dangerous gas is emitting.

09:21:47 3 THE COURT: Okay. Property A.

09:21:49 4 MR. ROSENTHAL: Property A. The fact that the  
09:21:53 5 ultimate source of the gas, if you go underground and trace  
09:21:57 6 it, is to a neighboring piece of property, is not relevant  
09:22:02 7 to the question presented, which is: Does the State have  
09:22:07 8 the police power to come onto property A to prevent a risk  
09:22:13 9 of injury to the community?

09:22:17 10 We submit, Your Honor, that the fact that the  
09:22:20 11 gas may have come from a neighboring piece of property, in  
09:22:25 12 this case, the fact that the gas came through from  
09:22:29 13 Platform Holly does not affect our right to come onto a  
09:22:36 14 piece of property to ameliorate and correct a risk emerging  
09:22:43 15 from that property.

09:22:44 16 THE COURT: Well, see what I'm concerned about  
09:22:47 17 here is that not only is the property that is being taken  
09:22:55 18 not property A, but the taker of the property is the owner  
09:23:03 19 of property A.

09:23:06 20 The State is the owner of the wells in Platform  
09:23:11 21 Holly; correct?

09:23:12 22 MR. ROSENTHAL: We own it, but -- and here's the  
09:23:15 23 critical point, Your Honor, which -- the fact is that Venoco  
09:23:22 24 always operated the EOF and our property as a unified whole.

09:23:28 25 THE COURT: But you say that I agree that that



09:23:33 1 is the factual history here, but I don't know why that's  
09:23:35 2 relevant to the legal question, especially when the State --  
09:23:40 3 because then I think you need to -- well, that's what I'm  
09:23:42 4 trying to figure out because --

09:23:43 5 MR. ROSENTHAL: Well --

09:23:44 6 THE COURT: -- for instance, I'd like you to  
09:23:46 7 really -- you know, that's why I gave you the hypo.

09:23:47 8 MR. ROSENTHAL: Right.

09:23:47 9 THE COURT: And what you're saying is you could  
09:23:51 10 actually have the State take from Green Energy Company,  
09:23:56 11 which played no role in the operation of the wells, had no  
09:24:05 12 obligations with respect to the operation of the wells, but  
09:24:08 13 you're saying to remedy the dangerous condition which is  
09:24:13 14 created by the wells, because it's the wells that emanate or  
09:24:21 15 emit, I guess -- whatever the right word is -- the H<sub>2</sub>S, the  
09:24:26 16 EOF is the remedy to that.

09:24:31 17 Let me give you this. Suppose we had a nuclear  
09:24:33 18 power plant and the nuclear power plant all of a sudden  
09:24:37 19 cracks. And the Government, to address that dangerous  
09:24:44 20 situation, needs to employ the one company in the country  
09:24:50 21 that has the ability to address that situation. But that  
09:24:53 22 company doesn't have any relation at all directly to the  
09:24:57 23 nuclear power plant.

09:24:59 24 And under your theory, the Government could come  
09:25:02 25 in and it could compel, take over that third-party

09:25:07 1 engineering company in order to remedy the nuclear power  
09:25:12 2 plant problem even though it had nothing to do with creating  
09:25:15 3 the problem?

09:25:16 4 MR. ROSENTHAL: No, Your Honor. We don't  
09:25:18 5 subscribe to that position. And we -- and with all due  
09:25:21 6 respect, that's not this case. What we're talking about  
09:25:25 7 here is -- and this is coming onto a piece of property. The  
09:25:32 8 basic facts are not in dispute. The H<sub>2</sub>S is coming off the  
09:25:37 9 EOF. The dangerous gas is coming --

09:25:42 10 THE COURT: Well, it's coming off? It's  
09:25:46 11 actually -- it's -- I thought the H<sub>2</sub>S --

09:25:47 12 MR. ROSENTHAL: Well --

09:25:48 13 THE COURT: -- gets from the wells and Platform  
09:25:50 14 Holly to the EOF where the EOF does chemical reactions to --

09:25:56 15 MR. ROSENTHAL: That's exactly --

09:25:58 16 THE COURT: -- render the H<sub>2</sub>S safe.

09:26:00 17 MR. ROSENTHAL: That's correct.

09:26:00 18 THE COURT: Okay.

09:26:01 19 MR. ROSENTHAL: And in the absence of the  
09:26:03 20 control mechanisms on the EOF, the H<sub>2</sub>S untreated would go  
09:26:10 21 into the general environment.

09:26:12 22 THE COURT: Well, let me ask you this: How does  
09:26:14 23 the -- the H<sub>2</sub>S is in the boiled -- in the gas that comes out  
09:26:18 24 of the wells at Platform Holly; is that right?

09:26:20 25 MR. ROSENTHAL: Yes. Yes.

09:26:21 1 THE COURT: What if the EOF just shut down the  
09:26:24 2 pipeline from Platform Holly, what would happen?

09:26:27 3 MR. ROSENTHAL: The --

09:26:29 4 THE COURT: So, it doesn't accept anything  
09:26:31 5 anymore. EOF just says, We're not taking any oil.

09:26:34 6 MR. ROSENTHAL: Which it cannot lawfully do.

09:26:36 7 THE COURT: Okay.

09:26:37 8 MR. ROSENTHAL: I mean, the law, the Clean Air  
09:26:42 9 Act permit and the other permits require, as a matter of  
09:26:46 10 law, that the EOF treat the H<sub>2</sub>S. It isn't as if the State  
09:26:57 11 could have cut the line without people going to jail. The  
09:27:03 12 operation was unified as -- under a Clean Air Act permit and  
09:27:07 13 was a requirement.

09:27:09 14 So, this is the point I'm trying to make, Your  
09:27:13 15 Honor. And that is, we came on to deal with what we viewed  
09:27:20 16 as an exigent circumstance about the problem at the EOF.  
09:27:28 17 And those gases may have had an ultimate source elsewhere,  
09:27:35 18 but there was nothing we could do, that the State could do  
09:27:40 19 to prevent that gas from going from the wells through  
09:27:44 20 Platform Holly to the EOF.

09:27:47 21 THE COURT: Let me stop you there. Why couldn't  
09:27:49 22 you have forced ExxonMobil to plug the well?

09:27:51 23 MR. ROSENTHAL: Ah, I'll deal with the  
09:27:54 24 ExxonMobil. And --

09:27:59 25 THE COURT: And before you do, because -- let me

09:28:01 1 just --

09:28:01 2 MR. ROSENTHAL: Yeah, I wanted to resolve this  
09:28:04 3 issue first and then get to ExxonMobil.

09:28:06 4 THE COURT: No. You know, that's one of the --

09:28:08 5 MR. ROSENTHAL: No. No. That's your  
09:28:10 6 prerogative.

09:28:11 7 THE COURT: Yeah. I'm, unfortunately, the one  
09:28:12 8 who has to decide the case.

09:28:12 9 MR. ROSENTHAL: Yes, Your Honor.

09:28:14 10 THE COURT: So, you, unfortunately, have to go  
09:28:16 11 with my questions, if you don't mind.

09:28:17 12 MR. ROSENTHAL: Absolutely.

09:28:18 13 THE COURT: And let the record reflect I'm not  
09:28:20 14 yelling or raising my voice in any way to make that point.  
09:28:26 15 The --

09:28:30 16 MR. ROSENTHAL: Do you want me to deal with  
09:28:31 17 ExxonMobil?

09:28:32 18 THE COURT: Let me ask a finer point question.  
09:28:37 19 You agree that but for the operation of the wells in  
09:28:45 20 Platform Holly, there would be no H<sub>2</sub>S to deal with at the  
09:28:49 21 EOF; correct?

09:28:51 22 MR. ROSENTHAL: That's correct. If --

09:28:52 23 THE COURT: So, if someone plugged the wells,  
09:28:57 24 there would be no need for the State to man, either by  
09:29:06 25 taking or otherwise the EOF; correct?

09:29:09 1 MR. ROSENTHAL: That's correct.

09:29:09 2 THE COURT: All right. Now, go ahead.

09:29:11 3 MR. ROSENTHAL: Okay. The problem with -- first  
09:29:13 4 of all -- and this is, I think, a critical point. The  
09:29:18 5 argument that they presented to this Court about ExxonMobil  
09:29:23 6 was not -- and I underscore -- not presented to the  
09:29:30 7 Bankruptcy Court. And the reason it did not deal with this  
09:29:34 8 issue, they didn't -- did not make the contention they're  
09:29:37 9 making today which is that ExxonMobil should have -- well,  
09:29:46 10 their argument is that ExxonMobil should have come onto the  
09:29:54 11 EOF and operated the EOF.

09:29:57 12 They never called an ExxonMobil witness. They  
09:30:00 13 never deposed an ExxonMobil witness. They never dealt with  
09:30:06 14 the issue as a factual matter in the Trial Court. As a  
09:30:10 15 result, the issue was never properly posed to the judge.  
09:30:17 16 What is in the record, Your Honor, is simply the Settlement  
09:30:22 17 Agreement that was entered into between the State and  
09:30:24 18 ExxonMobil.

09:30:26 19 It is correct, Your Honor, that ExxonMobil had  
09:30:31 20 an underlying obligation to plug and abandon some portion of  
09:30:37 21 the wells that were abandoned. There was a dispute between  
09:30:46 22 the State and ExxonMobil about the extent of that  
09:30:50 23 obligation. And as a result, a Settlement Agreement was  
09:30:55 24 entered into in which ExxonMobil, as a contractor to the  
09:31:01 25 State, undertook the plug and abandonment.

09:31:05 1 But let me tell you, that argument, that focus  
09:31:08 2 on plugged and abandonment doesn't get my opponents, the  
09:31:13 3 Trustee, to the promised land because whatever was  
09:31:17 4 ExxonMobil's obligation to plug and abandon did not require  
09:31:22 5 them to go onto the EOF. And we, the State, had no power to  
09:31:29 6 require them to operate the EOF. And, therefore, even if we  
09:31:36 7 could have and should have forced them to do the plug and  
09:31:41 8 abandonment, Exxon was not going to go onto the EOF. It  
09:31:46 9 was --

09:31:46 10 THE COURT: Well, that seems to me to suggest,  
09:31:51 11 at most, that for the time between -- for the time it would  
09:31:59 12 have taken Exxon to plug the well, you might have a takings  
09:32:03 13 argument.

09:32:04 14 MR. ROSENTHAL: Right.

09:32:05 15 THE COURT: But since you didn't at all compel  
09:32:08 16 Exxon to do what I think you admit it had an obligation to  
09:32:12 17 do, if you didn't ask it to, I don't know how you can argue  
09:32:16 18 that it's a justified takings for whatever period of time,  
09:32:22 19 you know, it --

09:32:28 20 MR. ROSENTHAL: I honestly am not following,  
09:32:30 21 Your Honor.

09:32:30 22 THE COURT: Yeah. That's fair. I mean, it  
09:32:32 23 was --

09:32:32 24 MR. ROSENTHAL: The time they were plugging and  
09:32:34 25 abandonment -- and abandoning, they -- someone needed to

09:32:38 1 operate the EOF. The --

09:32:41 2 THE COURT: Okay.

09:32:41 3 MR. ROSENTHAL: The weakness of their position  
09:32:43 4 is there was no way to force ExxonMobil. First of all,  
09:32:47 5 there's no evidence in the record on this issue, but --  
09:32:51 6 because no one ever asked ExxonMobil would they have done  
09:32:54 7 it.

09:32:54 8 But, as a logical matter, there was no statutory  
09:32:59 9 legal argument that we could have imposed on ExxonMobil that  
09:33:05 10 could have required them to set foot on the EOF. And I  
09:33:10 11 assure you, Your Honor, they never would have set foot  
09:33:13 12 because once they did, they would have liabilities and legal  
09:33:18 13 obligations that a sophisticated company like ExxonMobil was  
09:33:22 14 never going to do.

09:33:25 15 THE COURT: Yeah, but I think it's a given that  
09:33:30 16 if they are obligated to plug and -- plug the wells, they  
09:33:36 17 must have the ability to have access to the EOF to treat the  
09:33:42 18 H<sub>2</sub>S.

09:33:42 19 MR. ROSENTHAL: No. That's the point.

09:33:44 20 THE COURT: Well, how could you plug the wells  
09:33:46 21 without addressing the H<sub>2</sub>S problem?

09:33:48 22 MR. ROSENTHAL: They would be willing to plug  
09:33:49 23 and abandon, but they would have turned around to the State  
09:33:53 24 and said, You're going to have to facilitate that by going  
09:33:57 25 onto the EOF and doing exactly what we were going to do.

09:34:03 1 Absent a lawsuit, which would have taken ten years, there  
09:34:08 2 never was going to be ExxonMobil going onto the TNA and  
09:34:14 3 going to the EOF.

09:34:15 4 At most, all we could say is, Plug and abandon.  
09:34:19 5 They would have said, Fine, we need the EOF. You, the  
09:34:23 6 State, need to provide us with the EOF. You have to  
09:34:28 7 facilitate that.

09:34:29 8 THE COURT: Okay. See, I need to stop you  
09:34:31 9 because this is where I do feel like -- I think this all  
09:34:33 10 could be answered as a legal matter by looking at whatever  
09:34:37 11 contracts or regulations govern this, but to me it seems  
09:34:41 12 pretty important because they're suggesting -- this is like  
09:34:46 13 an undisputed area of -- before me or a question, rather,  
09:34:52 14 and I think it's undisputed.

09:34:55 15 You both agree that Exxon could be compelled by  
09:35:00 16 the State to plug the well; correct?

09:35:03 17 MR. ROSENTHAL: Some -- to some extent.

09:35:05 18 THE COURT: All right. Right. And the "some  
09:35:06 19 extent," the reason why you add those words is because your  
09:35:09 20 point is that you could not compel Exxon to pay for or use  
09:35:18 21 of the EOF or to somehow address the H<sub>2</sub>S issue; is that  
09:35:25 22 right?

09:35:25 23 MR. ROSENTHAL: That's one reason, but it's not  
09:35:27 24 the only reason.

09:35:28 25 THE COURT: All right.



09:35:28 1 MR. ROSENTHAL: But the fact is that when we  
09:35:32 2 went to Exxon, Exxon did dispute how many wells were  
09:35:37 3 covered. And we were going to buy basically a lawsuit if we  
09:35:42 4 were going to compel them to clean up, do all the plug and  
09:35:47 5 abandonment, which is why there was a Settlement Agreement  
09:35:50 6 in which they agreed to do X and Y.

09:35:53 7 Now, let me point out one very important aspect  
09:35:57 8 of the Settlement Agreement which may help the Court. The  
09:36:02 9 Settlement Agreement does mention the EOF. And it is very  
09:36:06 10 clear in the terms of the EOF -- and we can provide the  
09:36:11 11 cite -- that the EOF is not the subject of the Settlement  
09:36:15 12 Agreement. Exxon was very clear in negotiating the  
09:36:21 13 Settlement Agreement that it hadn't -- it did not want to  
09:36:23 14 have anything to do with the EOF, and it is expressly  
09:36:28 15 excepted from the terms of the Settlement Agreement. And  
09:36:30 16 we'll provide you the page, Your Honor.

09:36:32 17 THE COURT: Is the obligation on Exxon's part to  
09:36:35 18 plug the well or to safely plug the well?

09:36:38 19 MR. ROSENTHAL: Well, plug and abandonment  
09:36:41 20 includes a concept of safely closing it down as a permanent  
09:36:44 21 matter.

09:36:45 22 THE COURT: So, then why -- if that's the  
09:36:46 23 obligation Exxon had, why doesn't that cover use of the EOF?

09:36:51 24 MR. ROSENTHAL: Because we could not compel them  
09:36:55 25 to set foot -- the plug and abandon --

09:36:58 1 THE COURT: You could compel them to safely plug  
09:37:00 2 the well. That means that they have to come up with a way  
09:37:04 3 to do it. And if the only way to do it is to make use of  
09:37:08 4 the EOF, it seems that's a legal obligation on Exxon's part.

09:37:12 5 MR. ROSENTHAL: But the -- Your Honor, we would  
09:37:16 6 certainly have had a ten-year lawsuit on that issue. Their  
09:37:22 7 position would be safely plug and abandonment requires that  
09:37:25 8 we put in the concrete properly, that we do all the actions  
09:37:31 9 out at sea on our leasehold to make this -- make it  
09:37:37 10 appropriate, make an appropriate closure. Their position  
09:37:41 11 would absolutely, Your Honor, have been that we have no  
09:37:45 12 obligation to go to the EOF. They would have turned around  
09:37:50 13 and said, If you're going --

09:37:52 14 THE COURT: You might have had to fight that  
09:37:54 15 battle, but it sounded like --

09:37:55 16 MR. ROSENTHAL: But --

09:37:56 17 THE COURT: -- you conceded that Exxon had a  
09:37:58 18 legal obligation to safely plug the wells. You've conceded  
09:38:02 19 that, ultimately, the H<sub>2</sub>S safety threat emanates from the  
09:38:08 20 wells. You've said the only way to address that safety  
09:38:13 21 threat is through the operation of the EOF. It seems to me  
09:38:19 22 it just follows as a syllogism that as a logic -- logic  
09:38:25 23 syllogism that --

09:38:26 24 MR. ROSENTHAL: But --

09:38:27 25 THE COURT: -- Exxon then could be compelled to

09:38:29 1 make use of the EOF.

09:38:31 2 MR. ROSENTHAL: I can't disagree more, Your  
09:38:37 3 Honor. I don't think the syllogism -- their position will  
09:38:42 4 be -- safely plugging and abandonment will be limited to the  
09:38:48 5 operation to the activities that occur on our leasehold. If  
09:38:55 6 there needs to be support for that proposition, the State  
09:39:00 7 will need to -- if the EOF is needed for us to do that, it's  
09:39:05 8 like any other support activity.

09:39:10 9 But let me go to the more fundamental issue. We  
09:39:14 10 still were faced with a problem on -- in April of 2017, in  
09:39:20 11 which we had to deal with a situation in which there was gas  
09:39:24 12 coming out of -- the potential for gas coming out of the  
09:39:30 13 EOF. I mean, at most -- at very most what you're describing  
09:39:36 14 is a situation in which the State would have compelled --  
09:39:42 15 might have compelled Exxon, after five years of litigation,  
09:39:46 16 to do a plug and abandonment. But that did not represent --  
09:39:53 17 and this is a point that the trial -- that the Bankruptcy  
09:39:57 18 Court consistently made. We needed a solution today. We  
09:40:01 19 needed a solution that --

09:40:03 20 THE COURT: What's the "today"? What date is  
09:40:05 21 "today"?

09:40:05 22 MR. ROSENTHAL: As of April of 2017.

09:40:07 23 THE COURT: Okay.

09:40:08 24 MR. ROSENTHAL: And the fact that we might  
09:40:14 25 have some alternative, and two were expressly discussed by

09:40:18 1 the other side. A platform -- a boat that would be there or  
09:40:24 2 running a line ten miles to another location.

09:40:28 3 Any of these alternatives would have required  
09:40:32 4 years to implement. And what you're describing, the  
09:40:37 5 ExxonMobil alternative, is an alternative that there is no  
09:40:42 6 evidence could have been implemented in April of 2017. So,  
09:40:48 7 whatever our legal rights were, and even if you entertain  
09:40:53 8 the assumption that that legal right somehow could have  
09:40:56 9 compelled them to go to the EOF, it didn't -- there's no  
09:41:00 10 evidence in this record that that was an alternative.

09:41:05 11 THE COURT: Well, there's evidence that you pay  
09:41:08 12 for use of the EOF; right?

09:41:11 13 MR. ROSENTHAL: As an attempt to try to settle  
09:41:14 14 this matter for a limited period of time.

09:41:17 15 THE COURT: Wait, wait. You're saying it's a  
09:41:19 16 Rule 408 issue. This is a settlement.

09:41:20 17 MR. ROSENTHAL: No, no, no.

09:41:21 18 THE COURT: So, you -- it's undisputed --

09:41:22 19 MR. ROSENTHAL: Yeah.

09:41:23 20 THE COURT: -- that you paid for it.

09:41:24 21 MR. ROSENTHAL: Yeah, for a period of time.

09:41:25 22 THE COURT: Right. And so it's undisputed -- it  
09:41:27 23 could be paid for. So, why isn't there enough in the record  
09:41:30 24 to say that, Well, Exxon could have paid for it and could  
09:41:34 25 have been required to pay for it?

09:41:36 1 MR. ROSENTHAL: Well --

09:41:37 2 THE COURT: And, in fact, you can kind of -- I  
09:41:38 3 think you could even say there's record evidence of what  
09:41:41 4 they would have had to pay.

09:41:42 5 MR. ROSENTHAL: No, Your Honor. You've gone  
09:41:45 6 from could have to should have. The fact of the matter is  
09:41:49 7 there was no evidence in the record. Someone had to operate  
09:41:53 8 the EOF. But there's no evidence that we could have  
09:41:57 9 compelled or that Exxon would have been willing to operate  
09:42:02 10 the EOF.

09:42:04 11 THE COURT: Well, wait. You just said --

09:42:06 12 MR. ROSENTHAL: I'm not trying to contradict  
09:42:08 13 myself.

09:42:09 14 THE COURT: You just said that you agree that  
09:42:15 15 Exxon had a legal obligation to safely plug the wells.

09:42:18 16 MR. ROSENTHAL: Yes.

09:42:19 17 THE COURT: Okay. So, it seems to me, and maybe  
09:42:23 18 we can get something on briefing on it if you want, but  
09:42:27 19 there's a legal argument, at least, that that would -- that  
09:42:31 20 obligation would necessarily require compensation to the  
09:42:37 21 operator of the EOF by Exxon.

09:42:41 22 MR. ROSENTHAL: I don't see that connection.

09:42:44 23 THE COURT: Well, you --

09:42:44 24 MR. ROSENTHAL: I -- the fact that --

09:42:45 25 THE COURT: It's a given fact that the wells can

09:42:49 1 only be operated and can only be plugged safely if they have  
09:42:53 2 access to the EOF.

09:42:54 3 MR. ROSENTHAL: No, that someone had access.  
09:42:57 4 I'm -- there would have been a dispute, Your Honor. I mean,  
09:43:02 5 there would have been a dispute whether safely closing those  
09:43:06 6 wells would have required ExxonMobil to have to pay and go  
09:43:13 7 onto the EOF. Their position would have been that it  
09:43:17 8 doesn't entail that, Your Honor.

09:43:18 9 THE COURT: I guess the position -- I guess the  
09:43:21 10 question is: Did the State not at least contribute to the  
09:43:25 11 emergency by not seeking to get Exxon to fulfill that  
09:43:30 12 contractual obligation?

09:43:31 13 MR. ROSENTHAL: No, Your Honor. Because they --  
09:43:36 14 the emergency would have existed even if we turned around  
09:43:40 15 and demanded ExxonMobil start cleaning up the wells  
09:43:46 16 immediately. This emergency would have existed  
09:43:51 17 independently because the gas would still have been coming  
09:43:57 18 to the EOF and emerging from the site.

09:44:04 19 Your Honor, I see I haven't satisfied you on  
09:44:09 20 this issue.

09:44:12 21 To us -- first of all, the argument that they  
09:44:18 22 present in their reply brief about the fact that the gas  
09:44:22 23 came ultimately from the wells was also an argument they did  
09:44:28 24 not present to the Trial Court judge.

09:44:31 25 THE COURT: I think it's in the Trial Court's

09:44:33 1 opinion that the gas --

09:44:35 2 MR. ROSENTHAL: No, no, no.

09:44:35 3 THE COURT: -- problem emanates from the wells.

09:44:38 4 MR. ROSENTHAL: The -- I'm talking about the  
09:44:39 5 legal argument, which is the argument that as a result there  
09:44:45 6 was -- they -- there was -- we should not be legally  
09:44:50 7 entitled to have come onto the property because the gas  
09:44:54 8 ultimately came --

09:44:56 9 THE COURT: I don't know that there's an  
09:44:58 10 argument that you're not legally entitled to come onto the  
09:45:00 11 property. I think it's that if you do come onto the  
09:45:03 12 property, you have to pay them; right?

09:45:05 13 MR. ROSENTHAL: That is the legal argument.

09:45:06 14 THE COURT: That's a huge distinction. I don't  
09:45:08 15 think anybody here in this room, and please stand up if you  
09:45:12 16 disagree, argues that the State doesn't have the power to  
09:45:16 17 come and address a situation like this.

09:45:19 18 I think the only argument is whether you get to  
09:45:21 19 do it for free at the cost of the Trustee.

09:45:26 20 MR. ROSENTHAL: And can I go back to the  
09:45:30 21 principle argument, which was what I was going to make, and  
09:45:33 22 that is, although certainly an emergency is a justification,  
09:45:41 23 the legal concept here is broader, Your Honor.

09:45:45 24 The takings clause does not cover the State  
09:45:53 25 coming onto property to ameliorate a risk to public health,

09:45:57 1 safety or the environment. It does not -- there are all of  
09:46:02 2 these little cubbyholes that the Trustee wants to create:  
09:46:05 3 nuisance, emergency, necessity. The doctrine is broader  
09:46:10 4 than that. And the proof of that --

09:46:13 5 THE COURT: "The doctrine" being? What's "the  
09:46:15 6 doctrine"?

09:46:15 7 MR. ROSENTHAL: The doctrine that the State may  
09:46:19 8 enter onto private property to remedy a risk to public  
09:46:25 9 health, safety or the environment. And that entering the  
09:46:30 10 property and remaining on the property until the hazard is  
09:46:33 11 resolved does not constitute a taking of property for which  
09:46:38 12 compensation is owed. That is the legal proposition that we  
09:46:43 13 believe the Supreme Court of the United States, we believe  
09:46:47 14 the Supreme Court of California, both have held that to be  
09:46:51 15 the case.

09:46:53 16 There does not -- an emergency certainly is a  
09:46:57 17 subgroup of that, but there does not need to be an  
09:47:02 18 emergency. There does not have to be a -- an exigency that  
09:47:09 19 requires imminent and immediate harm for the State to come  
09:47:13 20 onto the property.

09:47:15 21 And I'll give you a huge example of that because  
09:47:19 22 it comes from their brief. Under the Superfund Statute, the  
09:47:25 23 administrator of the EPA is entitled by law to come onto  
09:47:30 24 property to remove pollutants and chemicals on the property.  
09:47:38 25 He doesn't have to prove there's an emergency, he just has



09:47:42 1 to prove that there's -- that these chemicals are on the  
09:47:46 2 property and are not being properly handled by the owner of  
09:47:50 3 the property. And there are dozens of those cases.

09:47:54 4 Congress can't create an exception to the  
09:47:58 5 takings clause. Every one of those EPA cases under *CERCLA*  
09:48:04 6 where EPA comes onto private property to get rid of  
09:48:09 7 dangerous chemicals is an example of the Federal  
09:48:14 8 Government's exercising of police power.

09:48:16 9 THE COURT: It might be the exercise of police  
09:48:18 10 power, but tell me: Where does it say that they get to do  
09:48:21 11 it for free?

09:48:22 12 MR. ROSENTHAL: All those cases -- I mean, there  
09:48:24 13 are numerous cases in which EPA comes on. EPA, when they  
09:48:29 14 exercise their *CERCLA* power, do not pay just compensation.  
09:48:35 15 And --

09:48:35 16 THE COURT: They don't pay any compensation at  
09:48:37 17 all?

09:48:38 18 MR. ROSENTHAL: They do not.

09:48:38 19 THE COURT: And these cases are in the briefing?

09:48:41 20 MR. ROSENTHAL: Yes. Our cases are in the  
09:48:43 21 briefing.

09:48:43 22 Let me give you two Supreme examples of that.  
09:48:47 23 The Supreme Court and -- and I -- I note, Your Honor -- I  
09:48:51 24 know Your Honor has questioned this.

09:48:56 25 In *Cedar Point Nursery*, which is the most recent

09:48:59 1 exposition of takings law by the Supreme Court, at the end  
09:49:04 2 of the opinion, the Supreme Court said, Our holding here  
09:49:08 3 does not affect background property law principles. And one  
09:49:16 4 of those principles, and I'm quoting, is "to enter property  
09:49:19 5 in the event of public or private necessity," which means,  
09:49:26 6 and I'm quoting now, "entry to overt serious harm to person,  
09:49:34 7 land or chattel"; that's at 141 Supreme Court 2079.

09:49:39 8 Where the Government comes onto property to  
09:49:41 9 overt harm to people, land, even chattels, is a background  
09:49:50 10 legal principle that entitles the Government to come onto  
09:49:54 11 property and avoid and -- without having to engage in just  
09:49:59 12 compensation, without -- it doesn't even constitute a taking  
09:50:05 13 where the Government comes onto property.

09:50:08 14 And in this case, Your Honor, and I need to  
09:50:11 15 bring you back to this case. We -- as Your Honor said,  
09:50:15 16 we -- we -- no one is disputing our right to come onto the  
09:50:19 17 property. If there was a risk of harm to persons, property,  
09:50:28 18 environment, and we were -- we reasonably believed that to  
09:50:32 19 be the case, our coming onto the property and our remaining  
09:50:36 20 on the property until the emergency ceased was an exercise  
09:50:41 21 of our police power. And the Bankruptcy Court got it  
09:50:46 22 exactly right when it said that that's a paradigmatic  
09:50:53 23 example of the exercise of the police power for which no  
09:50:55 24 compensation is owed.

09:50:57 25 Let me quote one other case, which is the

09:51:03 1 *Customer Company* case from the California Supreme Court  
09:51:06 2 which said the -- said basically the same thing. It talked  
09:51:11 3 about, and I'm quoting now, "The so-called emergency  
09:51:14 4 exception to the compensation requirement." It described  
09:51:20 5 that, and let me quote the words. This is, "a specific  
09:51:25 6 application of the general rule that damage to or even  
09:51:30 7 destruction of property, pursuant to a valid exercise of the  
09:51:35 8 police power, often requires no compensation under the just  
09:51:38 9 compensation clause."

09:51:41 10 Basically the emergency exception, the necessity  
09:51:46 11 exception, nuisance, these are all subgroups of a general  
09:51:49 12 principle. And we submit that what we did here was an  
09:51:54 13 exercise of our police power, exactly what the Bankruptcy  
09:51:59 14 Court held. And as a result of that exercise, no just  
09:52:05 15 compensation is owed.

09:52:06 16 If I can, I want to explain a little bit why the  
09:52:11 17 cases they cite about necessity and unforeseeability really  
09:52:20 18 are beside the point. The cases they cite, which are  
09:52:25 19 California cases, if you review all of them, with one  
09:52:29 20 exception, they are all public works cases.

09:52:36 21 Under California law, basically if the State is  
09:52:40 22 engaged in the planning, the construction, or the operation  
09:52:49 23 of a public work, the State is responsible for any damage  
09:52:54 24 resulting therefrom. All of these cases, *Oroville*, *Odello*  
09:53:02 25 *Brothers*, *House*, et cetera, Your Honor, are all examples of

09:53:05 1 public works. And what the State is trying to do is avoid  
09:53:09 2 compensation because they said it wasn't really the public  
09:53:13 3 work that did it, we had an emergency that caused the  
09:53:17 4 damage.

09:53:17 5 None of those cases, with one exception, deals  
09:53:22 6 with this circumstance which is coming onto property to  
09:53:27 7 remedy a danger of public health safety or the environment.  
09:53:32 8 Only one of the cases deals with that issue, and that's the  
09:53:36 9 *City of Rose* case.

09:53:37 10 And in that case, the Court held there was a  
09:53:41 11 factual dispute as to whether the emergency existed -- they  
09:53:46 12 call it emergency -- but whether the hazard existed at all  
09:53:50 13 because it was substantial testimony. This was a demolition  
09:53:55 14 case and the Court held -- and the Court held -- there was a  
09:53:58 15 dispute as to whether there was any danger posed by the  
09:54:01 16 building at all. So, it went to the underlining existence.

09:54:05 17 So, I want to bring the Court back to the basic  
09:54:12 18 holding here of the Trial Court -- of the Bankruptcy Court,  
09:54:16 19 which is we had a circumstance. We think there was an  
09:54:22 20 emergency, but it didn't need to be. What it needed to be  
09:54:26 21 was a risk to public health, safety or the environment. And  
09:54:30 22 if that was true, and I think it is hard to contend it was  
09:54:37 23 not true, then we had the right to enter the property.

09:54:42 24 And we submit, Your Honor, if you look through  
09:54:45 25 the case law, that in that circumstance there is no duty to

09:54:52 1 pay compensation if we are exercising our police power to  
09:54:56 2 come onto the property. And we cite enumerable cases for  
09:55:02 3 that proposition.

09:55:05 4 THE COURT: All right. Anything else?

09:55:09 5 MR. ROSENTHAL: Not unless Your Honor has some  
09:55:12 6 questions.

09:55:13 7 THE COURT: No. Thanks.

09:55:18 8 MR. HARRIS: Would the Court like to hear  
09:55:20 9 rebuttal?

09:55:20 10 THE COURT: If you have any rebuttal points to  
09:55:22 11 make.

09:55:22 12 MR. HARRIS: Yes. I have three points, Your  
09:55:24 13 Honor, and I'll be very brief.

09:55:25 14 First, on the CalGEM Order that we discussed,  
09:55:31 15 CalGEM did not order ExxonMobil to do the plugging and  
09:55:35 16 abandoning. CalGEM wrote a letter to ExxonMobil reminding  
09:55:39 17 them of their obligation that if Venoco was not able to do  
09:55:42 18 it, then they would be liable. And that's in the record at  
09:55:46 19 Page 1398.

09:55:47 20 The letter that's referenced in the footnote  
09:55:51 21 that we were looking at in the Bankruptcy Court's opinion is  
09:55:54 22 a reference to the letter that CalGEM wrote to Venoco to  
09:55:58 23 plug and abandon. I just wanted to clarify that. I think I  
09:56:02 24 may have misspoken on that.

09:56:03 25 On the ExxonMobil issue, this issue was

09:56:07 1 presented to the Bankruptcy Court. The Trustee presented  
09:56:11 2 evidence that ExxonMobil was the immediately preceding  
09:56:13 3 operator. That's on Page 864 of the record, and it's  
09:56:18 4 recognized in the footnote that we were discussing earlier,  
09:56:20 5 Footnote 516, the Bankruptcy Court's opinion.

09:56:22 6 The Trustee presented evidence that Venoco was  
09:56:25 7 finally unable to cover the cost of plugging and abandoning.  
09:56:28 8 And that's all that the Trustee had to show to demonstrate  
09:56:32 9 that ExxonMobil's obligated to plug and abandon under the  
09:56:35 10 California Public Resources Code as well as the lease.

09:56:39 11 The Trustee presented evidence that the  
09:56:41 12 Commission reserved its rights against ExxonMobil in the  
09:56:44 13 Phase 1 Agreement. And making that clear, the Bankruptcy  
09:56:47 14 Court found that ExxonMobil was obligated to plug and  
09:56:50 15 abandon, and that the EOF was necessary. And, again, that's  
09:56:53 16 in the footnote that we've referenced earlier.

09:56:55 17 On Your Honor's point about ExxonMobil  
09:57:00 18 requiring -- being required to use the EOF, that's exactly  
09:57:03 19 right. As the Bankruptcy Court stated in its opinion, "But  
09:57:07 20 here the operation of EOF is not simply convenient, it is  
09:57:11 21 necessary."

09:57:12 22 And if ExxonMobil was going to safely plug and  
09:57:16 23 abandon, it was required to use the EOF, and it would be  
09:57:19 24 required to pay the Trust for doing that. The Phase 1  
09:57:25 25 Agreement does say that the EOF is outside of the scope of

09:57:29 1 that agreement. But the State simply by coming into this  
09:57:33 2 Court and saying, But Exxon wouldn't have done that, we  
09:57:37 3 would have been in litigation. The State has lawyers. And  
09:57:39 4 if ExxonMobil won't comply with its obligations, the State  
09:57:43 5 should have enforced that. The State doesn't have the right  
09:57:47 6 to come in and take property because it chooses not to  
09:57:51 7 enforce its rights against ExxonMobil.

09:57:53 8 And the final point I'll make on the *CERCLA*  
09:57:56 9 cases that were addressed, all of those cases is where the  
09:57:59 10 Government is entering property where the hazardous material  
09:58:04 11 is on that property. And those are discussed in our reply  
09:58:09 12 brief on Page 19 in Note 4. So, those are all  
09:58:13 13 distinguishable from this case.

09:58:14 14 THE COURT: Okay. But there is hazardous  
09:58:16 15 material on the EOF; right?

09:58:18 16 MR. HARRIS: It's because it's the State's wells  
09:58:20 17 that are moving the hazardous material there, which is very  
09:58:24 18 different than the *CERCLA* situation where the owner of the  
09:58:27 19 property has hazardous material that it has caused to be on  
09:58:30 20 the property.

09:58:31 21 THE COURT: But under the permit to operate the  
09:58:35 22 EOF, Venoco was required to process the incoming oil and gas  
09:58:45 23 to address the H<sub>2</sub>S situation; right?

09:58:48 24 MR. HARRIS: I'm not sure about the permits,  
09:58:50 25 Your Honor.

09:58:51 1 THE COURT: Isn't that the whole purpose of the  
09:58:55 2 EOF?

09:58:55 3 MR. HARRIS: It is. I mean, it was designed to  
09:58:57 4 work with the -- to work with Platform Holly and the wells  
09:59:01 5 to process and to remove the hydrogen sulfide. But, again,  
09:59:06 6 when the State went into this, and the State under the  
09:59:10 7 leases and the State, whenever it knew that it might be  
09:59:14 8 obligated to step in if these wells were quitclaimed back,  
09:59:19 9 knew that the EOF was going to be required. And it should  
09:59:21 10 have required that in the bond or should have required  
09:59:24 11 ExxonMobil to come in and do that cleanup.

09:59:26 12 It didn't do that. The State made the decision  
09:59:30 13 not to put the cost of the EOF in the bond. Ms. Lucchesi  
09:59:34 14 testified, Yeah, we should have negotiated for a higher bond  
09:59:36 15 and didn't. That cost can't be shifted because the State  
09:59:40 16 doesn't want to pay for it or, more importantly, doesn't  
09:59:42 17 want to have ExxonMobil pay for it.

09:59:45 18 THE COURT: Just give me a second.

10:01:09 19 Okay. Thank you very much.

10:01:10 20 MR. HARRIS: Thanks, Your Honor.

10:01:11 21 THE COURT: All right. Thank you very much.

10:01:13 22 It's going to take me a while to think through  
10:01:16 23 this. There's a lot of complexity to the issues. I  
10:01:21 24 appreciate the argument.

10:01:22 25 And, oh, I know what I wanted -- I did want to



10:01:25 1 ask you both. Has the plugging been completed?

10:01:31 2 MR. ROSENTHAL: The -- we have notified the  
10:01:33 3 opposing -- the Trustee that we will be off the property by  
10:01:37 4 the end of May. The good news is the H<sub>2</sub>S releases were  
10:01:46 5 ended very recently, but we have to do cleanup on the site  
10:01:51 6 to remove H<sub>2</sub>S from the site. But all of that will be done  
10:01:54 7 by the end of May, and we will be off the property at that  
10:02:00 8 point.

10:02:00 9 THE COURT: Okay. All right.

10:02:03 10 And then -- you all can be seated. And then  
10:02:07 11 what's the status of the bankruptcy overall? Is this the  
10:02:10 12 only thing left to be adjudicated?

10:02:21 13 MR. DENDINGER: Good morning, Your Honor. Mark  
10:02:22 14 Dendinger from Bracewell, counsel to the Trustee handling  
10:02:25 15 the bankruptcy. The bankruptcy has been substantially  
10:02:28 16 concluded.

10:02:28 17 There's one claim that remains open. It's by  
10:02:32 18 Iron Mountain. It's a data storage claim. Frankly, it  
10:02:35 19 relates to the records related to this litigation as well as  
10:02:37 20 another piece of litigation that Bracewell is not handling  
10:02:40 21 for the Trustee.

10:02:41 22 So, there's this litigation, litigation related  
10:02:44 23 to the Plains All-American pipeline rupture that Your Honor  
10:02:48 24 referenced earlier and then one claim that we're aware of  
10:02:51 25 that's active for a reason --

10:02:54 1 THE COURT: Wait. Tell me about the rupture.  
10:02:55 2 So, there is litigation still pending about the rupture, the  
10:02:58 3 2015 rupture?

10:03:00 4 MR. DENDINGER: There is. Yes, Your Honor.

10:03:01 5 THE COURT: What's going on with that?

10:03:03 6 MR. DENDINGER: Again, counsel from -- Bracewell  
10:03:05 7 is not handling that litigation, Your Honor, so I have to be  
10:03:08 8 a little bit careful about it, I suppose. But that is  
10:03:12 9 litigation that's been ongoing since the May 2015 rupture.  
10:03:18 10 It's related to the shut-in of Platform Holly. And  
10:03:22 11 essentially the -- you know, the shut-in of the entirety of  
10:03:25 12 the company's production that kick-started the bankruptcy  
10:03:29 13 process, both bankruptcies.

10:03:31 14 THE COURT: So, it's probably worth a lot  
10:03:33 15 potentially?

10:03:34 16 MR. DENDINGER: In our mind, it's worth a lot,  
10:03:36 17 yes, Your Honor.

10:03:37 18 THE COURT: And I'm actually -- one other  
10:03:39 19 followup with the State. Let me ask you: Did the State --  
10:03:47 20 there's an intimation in the brief that the State would not  
10:03:50 21 allow for kind of an alternative to the Plain pipeline.

10:03:55 22 MR. ROSENTHAL: Oh, that has nothing to do with  
10:03:57 23 the California State Lands Commission.

10:04:00 24 THE COURT: What about the State? The State is  
10:04:03 25 in it, too; right?

10:04:04 1 MR. ROSENTHAL: Well, I mean, applications were  
10:04:05 2 made. I'm not sure -- there was an -- there was some  
10:04:13 3 proposal made for the pipeline to be reconstructed, but I  
10:04:19 4 have to confess, Your Honor, I don't know the details of  
10:04:23 5 that, what happened or what block or if there was even a  
10:04:34 6 blocking of the pipeline. I just don't know, Your Honor.

10:04:38 7 THE COURT: Okay. All right.

10:04:39 8 All right. Thank you all. Have a good day.

10:04:43 9 MR. HARRIS: Thank you, Your Honor.

10 (Court was recessed at 10:04 a.m.)

11 I hereby certify the foregoing is a true and  
12 accurate transcript from my stenographic notes in the  
13 proceeding.

14 /s/ Heather M. Triozzi  
15 Certified Merit and Real-Time Reporter  
16 U.S. District Court  
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